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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,358	11/05/2001	Jesus Santoyo Ortega	D/A0A47 XER 2 0422	3572

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EXAMINER

ZHOU, TING

ART UNIT PAPER NUMBER

2173

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/007,358

Applicant(s)

ORTEGA ET AL.

Examiner

Ting Zhou

Art Unit

2173

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-9.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


JOHN CABECA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 210

Continuation Sheet: The request for reconsideration has been considered but does NOT place the application in condition for allowance because: The applicant's arguments have been fully considered, however, they are not persuasive. Firstly, the examiner notes that, as the applicant pointed out, there is an inadvertent error in the office action dated 2/22/2005, in that the Baker reference was wrongly referenced with the patent number of 5,408,603; the correct number for the Baker reference is U.S. Publication No. 2002/0163544, as cited in the Notice of Reference Cited (form 892) mailed on 6/28/04. The examiner apologizes for this inadvertent mistake and thanks the applicant for noting the error. In the applicant's arguments filed on 5/23/2005, the applicant states that because the applicants were not aware that the examiner considered the limitations under the wherein clause to be optional, applicants did not amend independent claim 1 or otherwise argue against the examiner's position, and therefore, finality of the rejection should be withdrawn because a clear issue regarding the subject wherein clause was not established between the examiner and the applicant before the final rejection. With respect to the applicant's arguments, the examiner respectfully notes that the examiner's statements regarding the wherein clause was merely a reminder to the applicant that wherein clauses merely suggests limitations or makes limitations optional. In the art rejection of claim 1, where the wherein clause applies, the examiner did not treat the wherein clause as optional, but instead, cited references in the prior art, i.e. the Baker reference, where the limitations of the wherein clause are taught. Therefore, the examiner was only pointing out that the wherein clauses may not require steps to be performed, and not presenting a new issue because the limitations of the wherein clause was still examined despite of the optional nature of the wherein clause. The examiner respectfully maintains that the final rejection was proper and that the applicant's arguments have not placed the application in condition for allowance and therefore, claims 1-9 stand as rejected.